IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHARI L. SMEDLEY, an individual, Plaintiff, v. BLOCK COMMUNICATIONS, INC. WELFARE PLAN; and AETNA LIFE INSURANCE COMPANY, Defendants.	CIVIL CASE NO. ___________________

COMPLAINT IN CIVIL ACTION

AND NOW comes the Plaintiff, Shari L. Smedley, by and through her attorneys, Caroselli Beachler McTiernan & Coleman, LLC and Susan A. Meredith, Esquire, and files the following Complaint in Civil Action and, in support thereof, avers as follows:

PARTIES

1. Plaintiff, Shari L. Smedley, an individual, citizen and resident of the Commonwealth of Pennsylvania, resides at 28 Grey Fox Circle, Bethel Park, Pennsylvania 15102.

2. Defendant Block Communications, Inc. Welfare Plan (hereinafter "Plan") is a plan established and/or maintained by Block Communications, Inc. to provide health and welfare benefits to participants, including, but not limited to, Plaintiff Shari L. Smedley. The Plan's address is 405 Madison Avenue, Suite 2100, Toledo, Ohio 43604.

3. Defendant Aetna Life Insurance Company (hereinafter "Aetna") is a corporation and an insurance company duly organized and existing under the laws of a state other than Pennsylvania, with its principle place of business located at 151 Farmington Avenue, Hartford, Connecticut 06156. At all times relevant, Aetna was the claims administrator for the plan at issue in this case.

JURISDICTION AND VENUE

4. This is an action for equitable and legal relief brought under the Employer Retirement Income Security Act, 29 U.S.C. §101 *et seq*.

5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and 29 U.S.C. §1132.

6. Venue is proper in this district because this is where the breach took place.

FACTS

7. At all relevant times, Plaintiff was an employee of Block Communications, Inc. and was employed as the PG Store coordinator in Pittsburgh, Allegheny County, Pennsylvania.

8. In February of 2011, Plaintiff was involved in a motor vehicle accident wherein she suffered a head injury.

9. In August of 2012, while on vacation in Mexico and while standing in water with some debris from a hurricane, she noticed redness and swelling in her legs. When she returned to the United States, she was given a course of steroids; however, her symptoms progressed and she developed leg pain, fatigue, dizziness and itching and burning sensations in her extremities.

10. Since on or about August 23, 2013, Plaintiff has been disabled as a result of suffering post-concussion syndrome, fibromyalgia, neck and back pain, narcolepsy and central-nervous-system hypersensitivity.

11. Plaintiff presented a claim for benefits under the plan and was initially denied benefits on September 10, 2013. A true and correct copy of Aetna's denial is attached hereto as Exhibit "1". The letter, which speaks for itself, denies Plaintiff's claim on the basis that she did not meet the definition of "Test of Disability" under the plan.

12. Plaintiff, through counsel, appealed the September 10, 2013 denial and as a result of the appeal on or about May 5, 2014, Plaintiff was approved for long-term disability benefits from August 23, 2012 until June 30, 2014. A true and correct copy of Aetna's May 6, 2014 letter is attached hereto as Exhibit "2".

13. On October 17, 2014, Defendant Aetna sent Plaintiff a letter which stated that her claim had been reinstated for a closed period of time of 2/19/2013 to 6/30/2014 and providing Plaintiff with the policy definition of "Total Disability." The letter advised she was entitled to a review of the decision. A true and correct copy of Aetna's October 17, 2014 letter is attached as Exhibit "3".

14. On or about March 20, 2015, Plaintiff requested a review of the denial and submitted medical information to support her claim.

15. On or about July 7, 2015, Defendant Aetna again denied the claim for benefits after June 30, 2014. A true and correct copy of Aetna's letter of denial is attached hereto as Exhibit "4". The letter, which may speak for itself, indicates that the documentation did not provide support for a functional impairment that would have prevented her from performing the material duties of her own occupation or any occupation.

16. Upon information belief, Block Communications maintained a group disability income policy which provided long-term disability benefits to employees if they met the definition of "disability" after an elimination period of 180 days. A true and correct copy of the group disability policy (hereinafter "policy") is attached hereto as Exhibit "5".

17. The policy defines the "Test of Disability" as:

> You meet the test of disability on any day that:
>
> - You cannot perform the **material duties** of your **own occupation** solely because of an **illness**, **injury** or disabling pregnancy-related condition; and

- Your earnings are 80% or less of your **adjusted predisability earnings**.

(Exhibit 5, policy, p. 6).

18. The policy further defines the term "material duties" to mean:

> Duties that:
> - Are normally required for the performance of your **own occupation**; and
> - Cannot be reasonably omitted or modified. However, to be at work in excess of 40 hours per week is not a material duty.

(Exhibit 5, policy, p. 22).

19. The policy defines "own occupation" to mean:

> The occupation that you are routinely performing when your period of disability begins. Your occupation will be reviewed as it is normally performed in the national economy instead of how it is performed:
>
> - For your specific employer; or
> - At your location or work site; and
> - Without regard to your specific reporting relationship.

(Exhibit 5, policy, p. 22).

20. The policy defines "illness" as "a pathological condition of the body that represents a group of clinical signs and symptoms and laboratory findings particular to it, and that sets a condition apart as an abnormal entity differing from other normal or pathological body states". (Exhibit 5, policy, p. 21).

21. The policy defines "injury" as:

> An accidental bodily injury that it the sole and direct result of:
> - An unexpected or reasonably unforeseeable occurrence or event; or

- The reasonable, unforeseeable consequence of a voluntary act by the person; or
- An act or event must be defined as a time and place.

22. According to Defendant Aetna's claim file, the physical demands of Plaintiff's occupation as PG Coordinator included: constant sitting, handling, and fingering. Frequent walking, standing. Occasional reaching outward, reaching above shoulder, bending, lifting up to 50 lbs, push/pulling up to 40 lbs. The claim file notes classify the job as medium work.

23. At the request of Aetna, Dr. Priya Swamy, M.D., a physical medicine and rehabilitation doctor, prepared a report date April 4, 2014 wherein she opined that Plaintiff's physical limitations included only lifting up to 20lbs frequently and up to 40 lbs occasionally. She also opined that Plaintiff's computer time would require "slow titration up to tolerance."

24. At the request of Aetna, Dr. Dana Bernstein, PhD, a licensed psychologist, prepared a report on April 24, 2014 wherein she opined that restrictions outlined by Plaintiff's treating providers with respect to psychological restrictions were supported by the medical evidence. Such restrictions included two to three hours of recovery time after two to three hours of any cognitive or physical exertion; the need for longer breaks secondary to fatigue, dizziness, and nausea; inability to view a computer monitor for more than half hour; unscheduled breaks during the work day at least once an hour; and a low stress work environment.

25. The restrictions provided by the doctors retained by Defendant Aetna were inconsistent with the ability to perform the material duties of Plaintiff's occupation but Defendants the Plan and/or Aetna nonetheless terminated Plaintiff's benefits after June 30, 2014.

26. The Plan is a fiduciary within the meaning of 29 U.S.C. §§1002(21) and 1102 in that it exercised discretionary authority or discretionary control respecting management of the Plan

and/or exercise authority and control respecting management or disposition of its assets and/or had discretionary authority or discretionary responsibility in the administration of the Plan.

27. Aetna is a fiduciary within the meaning of 29 U.S.C. §§1002(21) and 1102 in that it exercised discretionary authority or discretionary control respecting management of the Plan and/or exercise authority and control respecting management or disposition of its assets and/or had discretionary authority or discretionary responsibility in the administration of the Plan.

28. Defendants the Plan and/or Aetna engaged in fiduciary acts connected to the administration of the group disability policy and in making their determination about whether the Plaintiff was entitled to benefits under the terms of the Plan.

29. Defendants the Plan and/or Aetna breached their fiduciary duties set forth in ERISA §404, 29 U.S.C. §1104 by failing to act for the exclusive benefit of the Plaintiff.

30. The Plaintiff has exhausted all administrative levels of appeal, and any further attempt to exhaust administrative remedies would be futile.

31. Defendants the Plan and/or Aetna operate under a structured conflict of interest in that they and/or it both funded and administered benefits under the Plan.

COUNT I

DENIAL OF BENEFITS

32. The foregoing Paragraphs are incorporated by reference.

33. Pursuant to ERISA §502(a)(1)(b), 29 U.S.C. §1132 (a)(1)(b), Plaintiff is entitled to bring this action to recover benefits due her under the terms of the Plan and to enforce her rights under the terms of the Plan or to clarify her rights to future benefits under the terms of the Plan.

34. Plaintiff submitted medical information confirming the continuation of her disability and her inability to perform the substantial material duties of her occupation due to continuing health and medical problems.

35. The Defendants improperly denied Plaintiff her benefits in the following manner:

a) It/they failed to acknowledge the findings of the treating physicians who indicated Plaintiff was unable to work;

b) It/they selectively and improperly relied upon physicians who did not have the expertise to render an opinion concerning the Plaintiff's disability;

c) It/they failed to take into account the medical records of Plaintiff's treating physicians;

d) It/they failed to acknowledge that their own reviewing physician, Dr. Priya Swamy, M.D. placed restrictions on Plaintiff that were inconsistent with the physical job requirements of her occupation;

e) It/they failed to acknowledge that their own reviewing physician, Dr. Dana Burnstein, PhD, agreed that restrictions and limitations placed on Plaintiff by her treating providers were supported by medical evidence;

f) It/they failed to acknowledge that their own reviewing physician, Dr. Dana Burstein, PhD, noted there were physical exam findings of functional impairment that suggested the Plaintiff's ability to work was directly impacted by adverse medication effects;

g) It/they terminated her benefits without evidence of a change or improvement in her physical and mental health and/or when there was no new evidence to refute the findings of treating physicians and/or Defendants own reviewing physicians who found physical and mental restrictions inconsistent with the ability to perform the requirement and material duties of her occupation;

h) It/they evaluated the medical evidence in a biased manner.

36. The Defendants denied the Plaintiff's claim in violation of the Plan documents.

WHEREFORE, pursuant to 29 U.S.C. §1132(a)(1)(b), the Plaintiff requests equitable and legal relief to:

a) Declare that Plaintiff is entitled to disability benefits, past and present, plus interest;

b) To place the Plaintiff in the position she would have been had she been paid the full amount of benefits to which she is entitled, including without limitation, interest, attorney fees and other losses resulting from Defendants' breach;

c) Order that the Defendants pay costs of suit, including attorney fees and costs pursuant to 29 U.S.C. §1132(g); and

d) Award all such other and further relief as the Court deems just and proper.

COUNT II

BREACH OF FIDUCIARY DUTY

37. The foregoing Paragraphs are incorporated herein by reference.

38. Defendants the Plan and/or Aetna were fiduciaries within the meaning of 29 U.S.C. §§1002 (21) and 1102.

39. As fiduciaries, they are required to discharge their duties "solely in the interest of the participants and beneficiaries and for the exclusive purpose of .providing benefits to participants and their beneficiaries; and . . . in accordance with the documents and instruments governing the Plan . . . . ERISA §404(a), 29 U.S.C. §1104(a).

40. Defendants breached this fiduciary duty when they failed to act for the exclusive purpose of providing benefits to the Plaintiff, a participant, and failed to act in accordance with the documents and instruments governing the Plan.

WHEREFORE, pursuant to 29 U.S.C. §1132(a)(2) and (3) and (c)(1), Plaintiff requests equitable and legal relief to:

a) Have the Court declare that Plaintiff is entitled to disability benefits, past and present, plus interest;

b) To place the Plaintiff in the position she would have been had she been paid the full amount of benefits to which she is entitled, including without limitation, interest, attorney fees and other losses resulting from Defendants' breach;

c) Order that the Defendants pay costs of suit, including attorney fees and costs pursuant to 29 U.S.C. §1132(g); and

d) Award all such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED.

Respectfully submitted,

By: Susan A. Meredith
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